P12

C.E. 8

19

Department of

OFFICE_____.

STATION_____

No. 526

Dated

Pages in the file

(S U B J E C T.)

B7017

To

The Secretary,
To the Board of Revenue, Land Revenue,
MADRAS.

BOARD OF REVENUE
20 NOV 1934
LAND REVENUE AND SETTLEMENT

Appeal petition of F. P. S. Albuquerque, proprietor of Messrs. A. Albuquerque & Sons, Tile Manufacturers, Mangalore, showeth as follows:-

I. That his appeal petition to the Hon'ble the Board of Revenue, Land Revenue, Madras, dated 14th April 1934, against the order of the Collector of South Kanara D. Dis. 5677-33 dated 1st March 1934 declining to lease to the petitioner the entire foreshore of the Netravati river reclaimed by Devappa Shenava, petitioner's predecessor in title and lying in front of petitioner's T. S. No.520 of Mangalore Thota village was allowed and the petitioner received Board's proceedings referring petitioner to the Collector of South Kanara for orders.

II. That petitioner accordingly received from the Collector proceedings D. Dis. 2378-34 dated 20th August 1934 sanctioning the lease to petitioner of only a portion of the land reclaimed with reference to the measurements of plots A and C noted in the sketch in the lease records of 1922 when the plot was first proposed to be assigned to Devappa Shenava, predecessor in title of petitioner. The Collector has not passed orders with regard to rest of the reclaimed land in the possession of petitioner.

III. It is against the above order that the Petitioner begs to file this present appeal on the following among other

other grounds :-

1. That throughout the proceedings before the Collector and the Hon'ble the Board of Revenue, the petitioner's claim was for the entire reclaimed land lying in front of the petitioner's T. S. No.520 and enclosed by the stone embankment put up by the petitioner's predecessor and repaired and improve by the petitioner after purchase by him of the tile factory which belonged to his predecessor in title in T. S.No. 520. Even the order passed by the Collector which formed the subject matter of the appeal was based on the assumption that the land granted on lease to the petitioner's predecessor in title included the entire reclaimed land.

2. That it was only after the petitioner's aforesaid appea was referred to the Collector for report with reference to the representations made therein and in the course of inspection of the place the Collector observed for the first time that the plot marked 13 in the sketch annexed to the lease of 1927 (the last lease granted to Devappa Shenava) was not identical with the plot A proposed to be given to Devappa Shenava in 1922.

3. That whatever may be the measurements given in the aforesaid plan of 1922 both the lessor and the lessee understood that the plot intended to be granted on lease in 1922 was a plot direct to the south of A. B. Pinto's land and north of plot No.14 and right in continuation of its western boundary along the foreshore of the river as shown in the plan attached to the registered lease of 1927. That this was the intention is made manifest by the strong stone wall put up by petitioner's predecessor in title along the whole length of the reclaimed plot from north to south in a line with the western revetment of plot No. 14, immediately after the grant

in 1922. This wall has stood there for atleast the last 12 years without being questioned by anyone including the Port authorities and Mr. & Mrs. A. B. Pinto.

4. The sketch in the present proceedings was also prepared on the footing that the whole of the reclaimed land formed the subject matter of the previous leases and of the proposed new lease.

(H) 5. The latest lease dated 29-7-1927 already referred to above granted by the Collector to Devappa Shenava, petitioner's predecessor in title, on the strength of which the petitioner holds over, has a sketch attached to it, and it may be seen from it that the plot leased, No.13 is identical with the land reclaimed. It may be noted that the length of the northern boundary of this plot is atleast double the length of the southern boundary furnishing a strong indication that the plot leased is not a rectangular one as is shown in the village Shanbhogue's plan relied upon by the Collector but an irregularly shaped plot corresponding exactly to the whole of the reclaimed land.

p/1.8(H)

6. It may be further observed that petitioner is not the person that reclaimed the plot but is only the successor in interest of that person and that he was entirely in the dark as to the exact measurements and extent of the land leased, when he applied for a transfer of the leasehold reclaimed land to his name; the petitioner honestly believed that the whole of the reclaimed land was included in the lease of 1927 as the plan annexed to it would show.

7. The plan prepared by the Magane Shanbhogue in 1922 shows the river as the western boundary and A. B. Pinto (whose estate now lays a claim) did not then urge any claim to the river bed or its foreshore lying to the west of the plot leased to Devappa Shenava, whatever its extent might have

been. He did not object either to the lease in favour of petitioner's predecessor in title or to the stone revetment put up by him immediately after the grant of the lease.

8. The petitioner's predecessor in title was permitted to reclaim the land and to protect it by a substantial stone wall without any objection from anybody (though the site is within Port limits) as per plan attached to the lease registered. The petitioner's predecessor in title has admittedly spent much money in reclaiming the land and in protecting it by a strong stone wall, which he would not have done at a huge cost, if it were an excessive reclamation and an encroachment. The plot reclaimed lies directly opposite to the bar. The petitioner estimates the cost of reclamation and of the protecting wall at not less than Rs.2000/-. This strong stone wall was observed by the Collector at the time of inspection.

9. The whole land reclaimed is essential for a proper and profitable working of his tile factory and for the construction of a proper roadway and a landing place.

10. Even if the reclaimed land is to be regarded as an encroachment it is not an objectionable one. It was never felt to be so for the past 12 years and it cannot be so hereafter. It is only equitable that the party who spent labour and money over it should have the benefit of it.

11. The Collector has declined to include the whole of the reclaimed land in the lease proposed to be given to petitioner apparently on the ground that he finds it an encroachment and perhaps also on the further ground that he considers the northern portion of it as useful to Mrs. A. B. Pinto as landing place as paragraph 3 of the order under appeal would show. The petitioner however, submits that the land reclaimed and left unassigned is admittedly the direct frontage of petitioner's factory and it adjoins immediately the land proposed to be

13. Both according to the practice prevailing in the district and on grounds of equity the petitioner is entitled to be given the entire reclaimed land. He purchased his tile factory relying on the benefits he would receive from the reclaimed land which was actually reclaimed and improved by petitioner's predecessor in title and by petitioner himself at much cost. The entire reclaimed land ought therefore to have been assigned to him.

14. It is not anybody's case that the land in question was reclaimed and protected by anyone other than Devappa Shenava.

It is therefore prayed that in modification of the order of the Collector the entire land reclaimed and in the enjoyment and possession of petitioner may be included in his lease.

Mangalore,
12-11-1934
~~9-1934~~.

J. P. S. Alvaregalu

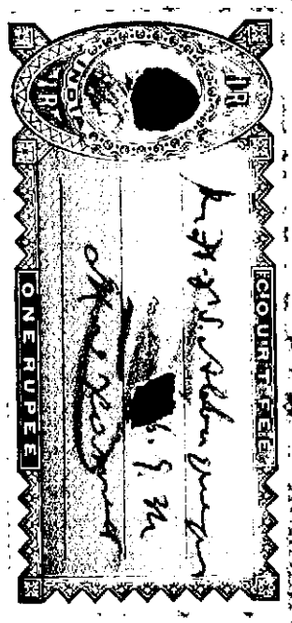
Petitioner.

D.Dis.2378-34.

Proceedings of the Collector of South Kanara, dated the 20th August 1934.

H. M. Gawne, Esquire, I.C.S.

Leases - Land within Mangalore Port limits - Mangalore Thota village - Lease of plots 13 and 14 adjoining R.S.210 - orders passed.



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(i) This office proceedings D.Dis.5677-33, dated 1.3.34

and(ii) B.P.Mis.2684 L.R.& S., dated 8.8.1934.

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The Collector's order D.Dis.5677-33, dated 1.3.1934, which was passed on a misapprehension of facts has been, at the Collector's request, been set aside by the Board of ----- Revenue.

2. At the inspection held on 16.6.1934 by the Collector, it was found that the eyesketch without measurements accompanying the lease executed on 16.9.1927 by Devappa Shenava did not show the position of plot No.13 correctly, and that according to the measurements of the plot, as noted in the sketch in the lease records of 1922, the width of plot No.13 was limited on the north to 74 ft. An enlarged copy of this sketch was --- produced by Mr. Albuquerque with his petition dated 30th May 1934 and was used for elucidating the points in his claim petition. There is no objection to renew the leases of the plots as correctly located now, with reference to the measurements (of plots A & C) noted in the sketch in the lease records of 1922. The Tahsildar is requested to obtain a lease deed from Mr. F.P.S. Albuquerque for the lease of these plots, --- subject to the usual conditions; a plotted sketch should --- accompany the lease deed, which should be submitted to the -- Collector for approval. Part of the land at the south is now covered by sea at all states of the tide. The Tahsildar should ascertain from Mr. Albuquerque if he wishes this ----- included in his lease.

3. No land need be reserved, at present, for Mrs. A.B. Pinto, since she has no need of any portion of the plots ---- referred to in paragraph 2, to take clay from her dock through her gate.

xx xx xx

(By Order)

21.8.34 English Head Clerk.

To the Tahsildar of Mangalore Taluk with the records of Taluk office C.7748-33-36 (94 pages) and (2) the records of the lease deed (Taluk office C.2673/Sup.22) of 1922 executed by Devappa Shenava - 14 pages

To the Port officer, Mangalore with the records of the time expired lease of 1927.

F. P. S. Albuquerque

Copy to the Revenue Divisional officer, Mangalore Division.

Paragraphs 1, 2 & 3 only to

(i) Mr. F.P.S. Albuquerque, Proprietor of Messrs. A.Albuquerque & Sons, Mangalore.

(ii) Mrs. A. B. Pinto, Proprietor, Tile factory, Mangalore.

M.D'S.21/8.

Lease - Land - South Kanara - Mangalore Taluk - Mangalore Thota village - Port limits - Lease of plots 13 and 14 adjoining R.S. No 210 - ~~F.P.S.~~ Dhr. 7.P.S Albuquerque/- Appeal

Pp 1-11 Cf. B 7017/34 9

Ref No B 7017/34-9 24-11-34

Forwarded to the Collector of South Kanara for remarks with all the connected records, especially the plans or sketches relevant to the leases of 1922 and 1927

For 2/11/34 29/11/34

h 23/11/34

To

The Coll^r of South Kanara with petn & enclosures in original to be retd.

AW 24.11.34.

Dated/

By order,

Asst Secretary

DESPATCHED 27 NOV 1934

reclamation to the west of the kiln and clay dump which stood [illegible] water level. Mr. Albuquerque's predecessors therefore started the reclamation from the southern boundary of the plot A at a point [illegible] feet west from the [illegible] line, and slowly extended the reclamation northwards,-- the hole in plot A not having at any time regularly required but getting filled in by the throwing of broken tiles in course of time. The reclamation line assumed, in its westerly growth, unconsciously, a line parallel to the eastern [illegible] line [illegible] to peg short at the north, -- on account of the use of that portion of the river there by the owners of K. S. 114 as a [illegible] fence cullies carried the clay from boats to the [illegible] the southern boundary (on which [illegible]) of Mr. Pirtle's property. Mr. [illegible] as reported by me on 7th June 1934, emphatically established the fact that the owners of the tile factory, i.e. S. K. S. 115 have been taking clay by way of this creek ever since the factory has existed and that there is no dispute about their exercise of this right from any one until in 1933 Mr. Albuquerque purchased the rights of the term lessee of the factory in K. S. [illegible] in 1933 set about making improvements and putting up his reclamation. If Mr. Albuquerque now desires to have, on lease, the land outside the plots A and B in respect of which he has executed a lease only, the question of subdividing this creek and reserving it for common use or of leasing it to Mr. A. B. Patel will have to be considered. There will be no objection whatever to Mr. Albuquerque being given on lease the rest of the land lying to the west of the plots A & B after allowing for Mr. Pirtle's [illegible] place. It is clear that after [illegible] Mr. Albuquerque's reclamation operations are [illegible] to him. The [illegible] Departments do not observe this and Mr. Pirtle does not [illegible] plot A his own boundary pegs are respected. Mr. Albuquerque's attempts to make out that he has a right to [illegible] and [illegible] are futile in my opinion. The matter has [illegible] privy between the owners of the [illegible] in the [illegible]

(H 17-49 (E))

A

6. The appeal petition, with its enclosures, received with the Board's reference are herewith resubmitted.

Your obedient servant,

Collector.

List of enclosures:-

1. D. Dis file 5677 of 1933 dated 1st March 1934 of the office of the Collector of South Kanara.

2. D. Dis. file 1281 of 1934 dated 21st March 1934.

3. L. Dis. file 1508 of 1934 dated 5th April 1934.

4. D. Dis. file 2378 of 1934 dated 20th August 1934--2, 3 & 4 of the South Kanara Collector's Office.

5. Records of File C.2673 Sup 22. of the Mangalore Taluk office containing the sketch of the lease of 1922 (14 pages).

6. Records of the lease deed of 1927 (12 pages).

South Kanara Collector's Office,
Mangalore, dated 23rd December 1934.

Collector.

Note File

Lease - Land - (South Kanara)
- Mangalore Taluk - Mangalore Kasba village - Port limits - Lease of plots 13 and 14 adjoining R.S. 210 - F.P.S. Albuquerque - Appeal.

B 7017/34 pp 1-11 C.F.
B 91/35 pp 21-24 C.F.

To A.S. (LR.)

Please see the petition at pp 1-11 C.F. and the report of the Collector of South Kanara at pp 21-24 C.F.

2. The Collector states that in his order under appeal dd 23 78/34 dated 20-8-34 he granted the lease of plots 13 and 14 adjoining R.S. 210 to the appellant (plots A and B in the sketch at page 35 of (E)) and that the appeal is in respect of the area lying outside those plots to their west. The claim made by the appellant is to a lease of the land that would be comprised within the subdivision that would be formed by joining the south western extremity of plot B to a point 132 feet west on the southern boundary line of R.S. 194 the plot belonging to to flow A.B. Pinto (the owner of

A.S. (LR.)

B-P. 2684 (misc) 8.834 (E)

p 15 C.F.

Sketch marked A p 22 C.F.

Sketch at page 35 (E)

the tile factory in R.S. 195). The p21 of
collector states that he had
intended the leasing of ten
land to from the subject of
a separate enquiry and that
Mr Albuquerque has preferred
the appeal in the belief that
any orders that he might pass
would not concede all the
land which he desired to have
outside the plots A and B.
He has discussed the claims
of the appellant in paragraphs
4 and 5 of his letter. He is of
the view that the land west of
the plots A and B and described
in paragraph 4 of his letter may
be leased to the appellant
after making provision for
the Pintoo landing place.
It seems that there is no need
for the Board to pass orders at
this stage as the Collector has
not yet passed orders in respect
of the matter under appeal. The
appellant may be asked to
apply to the Collector.

JV 12/35 — This is an appeal against the

12/35

Collector's order at p 13 Cf. The Collector has sanctioned in favour of the appellant the renewal of the lease of two plots of land (A & C) with reference to the measurements recorded in the sketch prepared in 1922 when they were originally leased to his predecessor-in-title. The appellant is dissatisfied with this order. His main contention appears to be that while the plot A leased out to his predecessor-in-title in 1922 and 1927 extended right up to the southern boundary of Mrs Pinto's factory including the creek by which she is taking her clay boats, the present lease excludes a portion on the north which he claims he has reclaimed. An appeal seems to lie against the Collector's order.

p 5 of (R)

para 3 p 3 Cf

H 21-24 Cf

p 11 r of (H)

On the merits the Collector's letter is full and clear. The sketch attached to the lease deed of 1927 is unintelligible. The Collector reports that the lease of 1927 was only a renewal of the lease of 1922. The sketch in the lease file of 1922 gives the measurements of the plots A and C. With reference to these measurements the Collector has localised the two plots and found that the reclamation does not extend up to the southern boundary of Mrs Pinto's

para 4 p 49 Cf of (E)

factor. Para 2 of the Collector's letter at p 4 & Cf of (E) ~~may be perused.~~ and para 5 of the letter at p 23 Cf may be perused

The appellant has no case for intervention. The petn may be dismissed.

26.1.35

I agree

26.1.35

P3 The Collector has quite rightly withheld the renewal of the lease to the Silt originally leased in 1922 & under rules no renewal of such land. It is open to the appellant to make a separate application to the Collector for any other land which he may require

1.2.35

Jo: A.S. (L.R.)

Draft submitted.

26.2.35

AS (L.R.)

SECY. 1-FEB 1935

7/2/35

26/2/35